

212571

BEFORE THE SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34486

OHIO VALLEY RAILROAD COMPANY
-ACQUISITION AND OPERATION EXEMPTION-
HARWOOD PROPERTIES, INC.

MOTION TO STRIKE
REPLY OF OHIO VALLEY RAILROAD TO
MOTION TO RECONSIDER

INDIANA SOUTHWESTERN RAILWAY CO.

Daniel A. LaKemper, Esq.
General Counsel
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400
Fax: (309) 697-8486

Dated: November 11, 2004.

BEFORE THE
SURFACE TRANSPORTATION BOARD

FINANCE DOCKET NO. 34486

OHIO VALLEY RAILROAD COMPANY
-VERIFIED NOTICE OF EXEMPTION-
HARWOOD PROPERTIES, INC.

MOTION TO STRIKE
REPLY OF OHIO VALLEY RAILROAD TO
MOTION TO RECONSIDER

Comes now INDIANA SOUTHWESTERN RAILWAY CO. ("ISW"), and respectfully requests that the Board strike the Reply of Ohio Valley Railroad "Corporation" to Indiana Southwestern Railway Company's Motion to Reconsider Petition to Reject or Revoke, or, in the alternative, grant ISW a reasonable time to file a rebuttal to the new mater introduced by Ohio Valley Railroad Company ("OVR") in said "Reply", and in support thereof states as follows:

It is by definition that a "Reply" should respond to the allegations made in the filing to which the response is directed. Instead, OVR attempts to introduce wholly new matters. For instance, OVR alleges that ISW "published an intermediate switch charge of \$1,500 per car (which will increase to \$2,500 per car on November 1, 2004)". This allegation is absolutely false. As shown by OVR's own exhibit, ISW Freight Tariff ISW 8000-F (attached to the "Reply" as Exhibit B), ISW's intermediate switch charge is only \$250.00 per car, a reasonable and customary charge in the industry. The \$2,500 intermediate switch charge applies only to locomotives and passenger cars, which are not common carrier movements, and involve special movements, more work, and greater liability.

OVR also alleges that "OVR acquired through its predecessors in interest direct interchange rights with CSX Transportation, Inc., through an easement over ISW tracks." Of course, OVR does not provide a copy of such "easement". It does not, because such easement does not exist. The allegation is also absolutely false. OVR has no such right. ISW has never granted any such right. And, further, no such right, if it were ever granted, would be valid, since OVR's alleged predecessor was not a common carrier, and could not have acquired any trackage or "interchange" rights.

OVR also makes the false allegation that the Motion to Reconsider was filed in response to OVR's Petition for Emergency Service, and repeats various allegations made in that pleading. The Motion, in fact, had nothing to do with OVR's Petition. It was in preparation well before OVR filed its Petition. The removal of the switches was an emergency action taken by ISW to prevent the unauthorized entry on ISW and CSX trackage by an entity (OVR or its affiliates) which did not have an interchange agreement, did not have valid reporting marks, and that ISW was informed and believed had represented to the AAR that it had interchange agreements with ISW and CSX. No Service Emergency was created by this action. OVR has never attempted to interchange a car to ISW. CSX has never attempted to interchange a car to ISW for furtherance to OVR. To the knowledge of ISW, no waybill naming OVR as either the originating or terminating railroad has ever been issued. OVR has no traffic. It is not a rail line within the definition of §10901. This entire transaction is a sham to force ISW to lower its rates for non-carrier movements.

Finally, the allegation that the Motion was untimely filed is without merit. The Board has the authority to revoke exemptions at any time. In this case, it is clear that

OVR is not entitled to the exemption, and the Board should revoke it before OVR files more frivolous Petitions.

CONCLUSION

OVR, under the guise of a "Reply" introduced new allegations, which are materially false. The Reply should be stricken, or, in the alternative, ISW requests that it be granted a reasonable time to file a rebuttal.

ISW again requests that the Board reconsider its decision in this matter, and that the Notice of Exemption filed by OVR be revoked *ab initio*.

Respectfully submitted,



Daniel A. LaKemper, Esq.
General Counsel
Indiana Southwestern Railway Co.
1318 S. Johanson Road
Peoria, Illinois 61607
Tel.: (309) 697-1400

VERIFICATION

I, Daniel A. LaKemper, General Counsel of Indiana Southwestern Railway Co., verify under penalty of perjury that I have read the above and foregoing Motion to Reconsider Petition to Reject or Revoke; that I have knowledge of the facts stated therein; and that those facts are true and correct to the best of my knowledge and belief. Further, I certify that I am qualified and authorized to file the foregoing document.



CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was served by sending it via UPS Next Day Air courier service, all charges paid, this 11th. Day of November, 2004, to the following:

Richard R. Wilson, Esq.
Vuono & Gray, LLC
2310 Grant Building
Pittsburgh, PA 15219-2383

Louis E. Gitomer
Ball Janik, LLP
1455 F Street, N.W.,
Suite 225
Washington, D.C. 20005



Formal Filing

Docket #:



-34486

--





Filed For: *	Indiana Southwestern Railway Co.
Filed By: *	Daniel A. LaKemper
(person who signed doc.)	
Firm / Company: *	Indiana Southwestern Railway Co.
Address: *	1318 S. Johanson Road
	Peoria, Illinois 61607
Phone: *	309-697-1400
FAX: *	309-697-8486
E-Mail: *	lakemper@mtco.com

Filed For:	
Filed By:	
(person who signed doc.)	
Firm / Company:	
Address:	
Phone:	
FAX:	
E-Mail:	

Filed For:	
Filed By:	
(person who signed doc.)	
Firm / Company:	
Address:	
Phone:	
FAX:	
E-Mail:	

Created:	2004 Nov 11 05:43 PM
----------	----------------------

Confidential Attachments:

Public Attachments:  - Public_Strike.Ohio Valley.pdf  - Public_Strike.Ohio Valley.doc